IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.197 OF 2006

1. National Textile Corporation
(Maharashtra North) Limited,
Unit Kohinoor Mills No.3
having its registered office
at N.T.C. House, Ballard Pier,
Narottam Morarji Marg,
Mumbai - 400 023.

2. The General Manager and his
Successor in Office, Naigaum,
Kohinoor Mills, Mumbai 400 014 .. Petitioners.

V/s.

1. Ramesh R. Shirsat,
Block No.E-23, Himalaya Society,
Asalfa Village, Ghatkopar,
Mumbai - 400 084.

2. Vasudha Pandurang Ahire,
Wd/of Pandurang V. Ahire,

3. Vilas Pandurang Ahire,

4. Jeetendra Pandurang Ahire,
7/406, A-Kohinoor Mills Chawl,
M.J. Phule Road, Naigaum,
Dadar (East), Mumbai - 400 014.

5. Deepika Dattaram Chavan,
Room No.208, Chawl No.8,
Lokmanya Priyadarshini Society,
Dadasaheb Ghadgil Marg,
Near Tilak Bhavan, Dadar (West),
Mumbai - 400 025.

6. Vaibhavi Vikas Mane,
G-11, Janardhan Apartment,
Shankar Ghadekar Marg,
Dadar (West), Mumbai 400 014.

7. Vaishali Gajanan Chavan,
Room No.3, Chawl No.1,
Sambhaji Nagar, Ghatla Village,
Near Karnataka High School,

Chembur, Mumbai - 400 071.

8. Mangala Chandrakant Nadkarni,
wd/o Chandrakant B. Nadkarni,
3A/19 Dasturwadi, Behind Urdu
School, Naigaon Cross Road,
Dadar (East), Mumbai 400 014. .. Respondents.

Mrs.Meena H. Doshi for the petitioners.

Mr.P.M. Patel for respondent Nos.1 and 2.

Ms.B.B. Dholakia for respondent Nos.5 to 8.

CORAM : J.P. DEVADHAR, J.

DATED : 31ST AUGUST, 2006.

ORAL JUDGMENT :

1. By this petition filed on December 5, 2005, the petitioners seek to challenge two orders passed by the Industrial Court at Bombay on March 30, 1998 and March 11, 2005 in a complaint filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act' for short).

2. By the impugned order dated March 30, 1998, the Industrial Court allowed the complaint (ULP) No.741 of 1990 filed by the three complainants under the MRTU & PULP Act. By the said order, the Industrial Court held that the petitioner No.1 is guilty of unfair labour practices covered under Item 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971 and directed the petitioners to pay to the original complainants salary and other

benefits for the period from June 1, 1990. By order dated March 11, 2005 passed in Miscellaneous Application No.26 of 2000 in complaint (ULP) No.741 of 1990 the Industrial Court quantified the amount payable by the petitioners by issuing a recovery certificate in the sum of Rs.91,449.25 paisa in favour of the legal heirs of the original complainant Mr.Chandrakant Nadkarni.

3. Facts relevant for the present petition are, that prior to 1982, Mr.Ramesh R. Shirsat, Mr.Pandurang V. Ahire and Mr.Chandrakant B. Nadkarni (original complainants) were working as clerks in Kohinoor Mill No.3 at Bombay.

4. As the employees of the textile industry including some of the employees of Kohinoor Mills No.3 had gone on a general strike from 18th January, 1982, the Central Government decided to step in and took over the management of Kohinoor Mill No.3 and vested the same in the petitioner No.1 company with effect from October 18, 1983 under the Textile Undertakings (Taking Over of Management) Act, 1983.

5. According to the original complainants, they had not participated in the strike and that they had reported for duty from time-to-time but they were not assigned any work. According to the petitioners, the

complainants had participated in the strike and hence their services stood terminated from January 18, 1982. In any event, from October 18, 1983, the services of all the employees employed with the erstwhile Textile Company namely Kohinoor Mill No.3 stood terminated in view of Section 25FF of the Industrial Disputes Act, 1947 ('ID Act' for short) and, therefore, there was no liability on the part of the petitioners to employ the complainants or to assign work or pay wages even if the complainants had reported for duty.

6. On July 12, 1990, the original complainants filed application (IDA) No.377 of 1990 in the Labour Court at Bombay under Section 33-C(2) of the ID Act claiming wages and other benefits for the period from January, 1982.

7. On July 16, 1990 the aforesaid three complainants filed complaint (ULP) No.741 of 1990 in the Industrial Court at Bombay under Section 28 of the MRTU & PULP Act seeking a declaration that the petitioners have committed unfair labour practices covered under Item 5 and 9 of Schedule IV of the MRTU & PULP Act and further sought a direction, directing the petitioners to assign work to the complainants and that the petitioners be directed to pay salary and other benefits with 18% interest from June 1, 1990.

8. The application (IDA) No.377 of 1990 filed under Section 33-C(2) of the ID Act was allowed by the Labour court on October 20, 1995. The Labour Court held that the complainants had reported for duty from time-to-time, but no work was assigned to them and, therefore, the claimants are entitled to the wages and other benefits for the period from January 1982. The petitioners have accepted and implemented the said order by paying to the complainants the amount quantified by the Labour Court for the period from January 1982 to May 1990.

9. In the complaint (ULP) No.741 of 1990, the petitioners filed their written statement on August 17, 1990 opposing the claim and denied the allegations made in the complaint. During the trial, evidence was led on October 10, 1994 and by an order dated November 30, 1994, the Industrial Court dismissed the complaint on the ground that the petitioner No.1-company being a Sick Industrial Unit, the declaration of unfair labour practice cannot be given. Challenging the said order, the complainants filed a writ petition bearing No.1130 of 1995 and the same was allowed on July 4, 1995 and the matter was remanded back to the Industrial Court for decision on merits. Thereafter, the parties led further evidence and by the impugned order dated March 30, 1998,

the Industrial Court allowed the complaint by holding that the petitioners are guilty of unfair labour practices covered under Item 5 and 9 of Schedule IV of the MRTU & PULP Act. By the said order, the petitioners were directed to provide work to the complainants and also pay salary and other backwages to Mr.Shirsat & Mr.Ahire from June 1, 1990. As regards the claim of Mr.Nadkarni, the Industrial Court directed the petitioners to pay salary and other benefits to the legal heir of the deceased Mr.Nadkarni for the period from June 1, 1990 to June 1, 1992.

10. As the petitioners failed to comply with the order dated March 30, 1998, Mr.Shirsat and Mr.Ahire, filed Contempt Petition No.124 of 1999 on the Appellate Side of this Court. The said Contempt Petition was disposed of on April 11, 2000 by recording the willingness of the petitioners to pay to the complainants an amount equal to 40% of the backwages awarded by the Industrial Court, Bombay as also the terminal benefits. As regards the balance, it was recorded that the complainants were entitled to recover the same by executing the order dated March, 30, 1998. It is not in dispute that the petitioners have deposited in Court amount equivalent to 40% of the wages payable to Mr.Shirsat from June 1, 1990 upto April 11, 2000. In the case of Mr.Ahire, the petitioners have deposited the

amount from June 1, 1990 to July 14, 1997 and in the case of Mr.Nadkarni from June 1, 1990 to May 31, 1990. The said amounts have been withdrawn by the complainants / legal heirs.

11. To recover the balance amount of salary and other benefits payable under the order dated March 30, 1998, the complainants / legal heirs filed miscellaneous application (ULP) No.26 of 2000 in complaint (ULP) No.741 of 1990 seeking recovery certificate under Section 50 of the MRTU & PULP Act.

12. By the impugned order dated March 11, 2005, the Industrial Court rejected the application of Mr.Shirsat and Mr.Ahire and allowed the application of the legal heir of Mr.Nadkarni by granting recovery certificate in the sum of Rs.91,449.25.

13. This petition is filed on December 5, 2005 to challenge the order passed by the Industrial Court on March 30, 1998 in favour of three complainants and also the order dated March 11, 2005 granting recovery certificate in favour of the legal heir of Mr.Nadkarni.

14. This petition was admitted on December 7, 2005 and this Court granted interim relief in terms of prayer (b) subject to petitioner’s depositing the amount set

out in the recovery certificate issued on March 11, 2005. Accordingly, the petitioners have deposited the said amount in this Court.

15. Ms.Doshi, learned advocate appearing on behalf of the petitioners submitted that the impugned order dated March 30, 1998 passed in complaint (ULP) No.741 of 1990 is without jurisdiction, because, the allegations made in the complaint to the effect that the complainants were continuously denied work tantamount to termination of service covered under Item 1 of Schedule IV of the MRTU & PULP Act and such a dispute, as per Section 7 of MRTU & PULP Act can be decided only by the Labour Court and not by the Industrial Court. Alternatively, Ms.Doshi submitted that the above allegations made in the complaint constitutes closure within the meaning of Section 3(8A) of the Bombay Industrial Relations Act, 1947 ('BIR Act' for short) and such a dispute can be adjudicated only by the Labour Court and not by the Industrial Court. Thus, it is submitted that the impugned order dated March 30, 1998 passed by the Industrial Court is without jurisdiction.

16. Even on merits of the case, it is submitted that the complaint filed by the complainants was hopelessly barred by limitation and in the absence of any statement made on oath as to the dates on which the complainants

had reported for work after June 1, 1990, and the names of the officers who had refused to give work, the Industrial Court could not have held that the petitioners are guilty of unfair labour practices covered under Item 5 and 9 of Schedule IV of the MRTU & PULP Act and award backwages to the complainants.

17. Strong reliance was placed by the advocate for the petitioners on the decision of this Court in the case of Sadanand D. Phansekar V/s. National Textile Corporation (South Mah.) Ltd. reported in 1997 II CLR 801 and the decision of this Court in the case of NTC V/s. Mohammad Umar Mohammad Hanif reported in 2001 II CLR 145, wherein it is held that the refusal to assign work tantamount to termination of service and such a dispute is an industrial dispute which has to be adjudicated upon by the Labour Court either under Section 10 of the Industrial Disputes Act or under Section 78 and 79 of the Bombay Industrial Relations Act, 1946. It is submitted that the decision of the learned Single Judge in the case of Sadanand D. Phansekar (supra) has been upheld by the Division Bench of this Court and the same is reported in 1998 I CLR 346. Accordingly, it is submitted that in the present case the Industrial Court had no jurisdiction to entertain the complaint filed on July 16, 1990 and, therefore, the impugned order passed on March 30, 1998

being without jurisdiction, the same is liable to be quashed and set aside.

18. Relying upon the decision of the Apex Court in the case of Regional Manager, SBI V/s. Rakeshkumar Tiwari reported in 2006(1) SCC 530 and the decision in the case of U.P. State BrassWare Corporation V/s. Uday Narayan Pandey reported in 2006(1) SCC 479, Ms.Doshi submitted that the onus is on the workmen to plead and prove that they were not gainfully employed during the period for which backwages are claimed. In the present case the complainants have neither pleaded nor established that they were not gainfully employed during the period for which the backwages are claimed. It is submitted that Mr.Ahire in his cross-examination had admitted on March 17, 1998 that for some period he was gainfully employed in another factory. It is submitted that the Industrial Court failed to record any findings to that effect and, therefore, the impugned order dated March 30, 1998 is liable to be quashed and set aside.

19. Although there is inordinate delay in challenging the order dated March 30, 1998 and the delay is not explained in the petition filed on December 5, 2005, it is submitted that since the order passed by the Industrial Court on March 30, 1998 is without jurisdiction and invalid, the petitioners are entitled

to challenge the said order along with the order dated March 11, 2005, whereby the order dated March 30, 1998 is sought to be executed.

20. With reference to the recovery certificate granted by the Industrial Court on March 11, 2005 it is submitted that as per the certified standing order No.11-A, a clerk employed in the Textile Mill attains superannuation on completion of 60 years of age and the services of such a workman can be continued till the age of 63 years provided such workman continues to be efficient. In the present case, Mr.Nadkarni attained the age of superannuation on June 12, 1989 and in absence of any findings to the effect that Mr.Nadkarni continued to be efficient, his services could not be continued beyond June 12, 1989. Therefore, the impugned order passed by the Industrial Court on March 11, 2005 directing the petitioners to pay wages for the period from June 1, 1990 to June 1, 1992 is totally illegal and contrary to law.

21. Assuming that Mr.Nadkarni was entitled to continue in service upto his attaining the age of 63 years, it is submitted that the amount determined by the Industrial Court as due and payable by the petitioners is also incorrect. It is submitted that the basis on which the amount has been quantified is not set out in

the impugned order dated March 11, 2005 and thus, both the orders impugned in the petition are liable to be quashed and set aside.

22. Mr.Patel, learned advocate appearing on behalf of respondent Nos.1 and 2 submitted that the challenge in the writ petition to the order of the Industrial Court dated March 30, 1998, suffers from gross delay and latches. The impugned order is dated March 30, 1998 and the petition is filed on December 4, 2005. There is no explanation given in the petition for the inordinate delay. Moreover, the order dated March 30, 1998 has been partially implemented by the petitioners in the year 2000 by paying 40% of the wages and other benefits to the two complainants for the period from June 1, 1990 till completion of 60 years and, therefore, in the year 2005 it is not open to the petitioners to allege that the order of the Industrial Court passed on March 30, 1998 is without jurisdiction or that the complainants are not entitled to wages for the period after June 1, 1990. Therefore, the petition which suffers from gross delay and latches is liable to be dismissed.

23. Even on merits, Mr.Patel submitted that there is no substance in the contention of the petitioners that the Industrial Court had no jurisdiction to entertain the complaint. He submitted that admittedly the

petitioners have not issued termination letter to the complainants at any point of time. In the written statement filed by the petitioners on August 17, 1990 there is no allegation that after June 1, 1990 the services of the complainants are deemed to be terminated or that there is deemed closure from June 1, 1990. The complaint (ULP) No.741 of 1990 was dismissed by the Industrial Court on November 30, 1994 on the ground that the petitioner No.1-Company being a Sick Industrial Unit, the declaration of unfair labour practice cannot be given. The said order was set aside by this Court in a writ petition and the matter was remanded back. Even after remand, the petitioners had not chosen to amend the written statement. Therefore, in the absence of any pleadings and evidence led before the Industrial Court to the effect that the services of the complainants were deemed to be terminated / closure after June 1, 1990, it is not open to the petitioners to contend that the Industrial Court had no jurisdiction to entertain the complaint on account of deemed termination of service from June 1, 1990.

24. Relying upon the decision of this Court in the case of NTC V/s. Anant P. Joshi reported in 2000 III CLR 249, Mr.Patel submitted that in the present case, the petitioners have admitted the existence of the relationship of employer and employee between the

complainants and the Corporation by paying salary and other benefits for the period from January 1982 to May 1990 as per the order passed by the Labour Court in Section 33-C(2) proceedings on November 20, 1995 and by paying 40% of the wages and other benefits for the period from June 1, 1990 till the completion of 60 years. Therefore, it is not open to the petitioners to contend that the complainants failed to establish the existence of employer-employee relationship after June 1, 1990.

25. It is submitted that the plea of deemed closure is also without any merit. As held by this Court in the case of Anant P. Joshi (supra), in the present case also, there were more than 100 employees in the establishment and the procedure for closure of the unit as contemplated under Section 25(O) of the ID Act has not been followed. In the present case, the Industrial Court on trial of the complaint came to the conclusion that by not assigning work to the complainants and assigning work to the employees who are juniors to the complainants, the petitioners have committed unfair labour practice and, accordingly ordered the petitioners to provide work and also pay wages and other benefits to the complainants.

26. Relying upon two decisions of the Apex Court in

the case of Chandavarkar Sita Ratna Rao V/s. Ashalata S. Guram reported in AIR 1987 SC 117 and in the case of State of J & K V/s. Sajid Ahmed Mir delivered on July 17, 2006 in Appeal (Civil) NO.642 of 2004 (unreported), Mr.Patel submitted that where the petition suffers from gross delay and latches and where there is no perversity in the order impugned in the petition, the writ Court ought not to exercise its jurisdiction under Article 226 / 227 of the Constitution of India. Accordingly, it is submitted that no case is made out for interference in exercise of writ jurisdiction and, therefore, the petition must be dismissed.

27. Ms.Dholakia, learned advocate appearing on behalf of respondent No.8 (legal heir of deceased Chandrakant Nadkarni) supported the order of the Industrial Court dated March 11, 2005 in granting recovery certificate. Relying upon three decisions of this Court in the case of Tata Textile Mills V/s. Munnilal N. Yadav reported in 1990 I CLR 120, in the case of Maharashtra State Textile Corporation Limited V/s. Vasudev V. Joshi reported in 1991 II LLJ 457 and the decision in the case of Parshuram G. Bhoir V/s. NTC reported in 2002(2) Mah.L.J. 79, Ms.Dholakia submitted that in the present case Mr.Nadkarni was entitled to continue in service upto the age of 63 years. In the present case, admittedly the petitioners

have not issued notice to Mr.Nadkarni stating that he was superannuated on attaining the age of 60 years and no material was adduced before the Industrial Court to establish that Mr.Nadkarni was inefficient to perform his duties after attaining the age of 60 years. Even the amount claimed by the respondent No.8 before the Industrial Court was not disputed by the petitioners. In these circumstances, it is submitted that the challenge to the order dated March 11, 2005 is devoid of any merit and the same is liable to be dismissed.

28. I have carefully considered the rival submissions as also the authorities cited by the counsel on both sides.

Re : Challenge to the order of the Industrial Court dated March 30, 1998

29. The petitioners have sought to challenge the order of the Industrial Court dated March 30, 1998 by filing the present writ petition on December 5, 2005. Admittedly, no explanation is given in petition as to why the petitioners took six and half years to challenge the order dated March 30, 1998. Moreover, it is pertinent to note that in the interregnum, the petitioners have partially implemented the order dated March 30, 1998 by paying 40% of the wages and gratuity

for the period from June 1, 1990 till the complainants attained the age of superannuation. Even after the complainants / legal heirs initiated proceedings for recovery of the balance amount by filing Miscellaneous Application (ULP) No.26 of 2000, the petitioners did not deem it proper to challenge the order dated March 30, 1998. It is only after the Industrial Court issued recovery certificate on March 11, 2005, the petitioners chose to file the present writ petition on December 4, 2005 to challenge the order dated March 30, 1998. In these circumstances, the plea that the petition suffers from gross delay and latches deserves acceptance.

30. Even on merits, in my opinion, the petitioners have not made out a case for interference under Article 226 of the Constitution.

31. The main argument of the petitioners is that the allegations in the complaint to the effect that the petitioners had continuously offered themselves for work, but work was refused to them constitutes deemed termination / closure covered under Item 1 of Schedule IV of the MRTU & PULP Act / under Section 3(8A) of the BIR Act, 1946 and, therefore, such a dispute can be adjudicated by the Labour Court and not by the Industrial Court. Admittedly, the plea of deemed termination / closure after June 1, 1990 was not raised

by the petitioners in their written statement filed in complaint (ULP) No.741 of 1990. The specific plea raised in the written statement was that the services of the complainants stood terminated from the date of the general strike on January 18, 1982 or from June 1, 1983 because the complainants failed to report for duty on or before May 31, 1983 as per the understanding arrived at between the Rashtriya Mill Mazdoor Sangh, the representative Union for Cotton Textile Industry and the Mill Owners Association. Alternatively, it was submitted in the written statement that on the textile unit vesting in the Government on and from October 18, 1983, the services of all the employees employed with the erstwhile textile company stood terminated with effect from October 18, 1983. It was further submitted in the written statement that even if there was no termination, the allegations that the petitioners continuously refused to give work constituted closure within the meaning of Section 3(8A) of the BRI Act and in such a case the remedy is to claim compensation by initiating proceedings before the Labour Court.

32. All these arguments have already been rejected by the Labour Court vide order dated November 20, 1985 in the 36-C(2) proceedings initiated by the complainants. By the said order, the petitioners were directed to pay wages to the complainants for the period

from January 1982 to May 1990. Admittedly, the petitioners have accepted and implemented the said order of the Industrial Court dated November 20, 1995 by paying the wages and other benefits to the complainants for the period from January 1982 to May 1990. In these circumstances, the finding recorded by the Industrial Court by rejecting the specific plea of deemed termination / closure in the year 1982-83 raised by the petitioners in their written statement cannot be faulted.

33. To overcome the above difficulty, it is contended that the allegation in the complaint that the petitioners refused to give work even after June 1, 1990 constitutes deemed termination of service / closure after June 1, 1990 and, therefore, such a dispute can be adjudicated only by the Labour Court and not by the Industrial Court. There is no merit in this contention, because, as stated earlier, the plea of deemed termination / closure after June 1, 1990 was not raised in the written statement and such a plea cannot be permitted to be raised for the first time in writ petition that too after six and half years of passing the adjudication order. Moreover, as stated earlier, in the present case not only the petitioners have paid full wages to the complainants for the period from January 1982 to May 1990 but they have also paid 40% of the

salary and other benefits including gratuity to Mr.Shirsat and Mr.Ahire for the period from June 1, 1990 till completion of 60 years. Therefore, the plea of deemed termination / closure from June 1, 1990 raised for the first time in the writ petition is devoid of any merit and is liable to be rejected.

34. Strong reliance was placed by the advocate for the petitioners on the decision of this Court in the case of Sadanand Phansekar (supra). In my view, the said decision does not support the case of the petitioners, because, firstly in that case the application made under Section 33-C(2) of the ID Act claiming wages for the period from 1983 was remanded back for adjudication in the light of the argument of deemed termination / closure raised by the N.T.C. In the present case, the Labour Court has already adjudicated upon the application filed under Section 33-C(2) of the I.D. Act and held that the petitioners are liable to pay wages and other benefits to the complainants for the period from January 1982 to May 1990. The petitioners have accepted and implemented the above decision of the Labour Court. Secondly, the petitioners have admittedly paid 40% of the wages and gratuity in the case of Mr.Shirsat from June 1, 1990 to April 11, 2000 and in the case of Mr.Ahire from June 1, 1990 to July 14, 1997. Thus, the issues raised by the

petitioners in their written statement have already been adjudicated upon by the Labour Court and, therefore, the decision of this Court in the case of Sadanand Phansekar (supra) does not support the case of the petitioners.

35. It is pertinent to note that by the impugned order dated March 30, 1998 the Industrial Court directed the petitioners to pay salary and other benefits to Mr.Shirsat and Mr.Ahire from June 1, 1990 but did not specify the period for which the salary and other benefits should be paid. The petitioners themselves have computed the period and paid 40% of wages and other benefits including gratuity to Mr.Shirsat from June 1, 1990 to April 11, 2000 and to Mr.Ahire from June 1, 1990 to July 14, 1997. In these circumstances, the grievance of the petitioners that on account of deemed termination / closure, the complainants are not entitled to wages and other benefits from June 1, 1990 cannot be sustained.

36. The contention of the petitioners that the complaint was time-barred and that the complainants have failed to establish that they had continuously offered themselves for duty after June 1, 1990 and that the petitioners refused to give work, is without any merit, because, by adjudication order dated November 20, 1995 the Labour Court has held that the relationship of

employer-employee existed between the complainants and the petitioner No.1 from January 1982 and the same is accepted by the petitioners and the petitioners have infact paid wages to the complainants for the period from January 1982 to May 31, 1990. Therefore, there is no termination letter issued by the petitioners. The complainants by their advocates letter dated July 7, 1990 placed on record that the complainants have been continuously reporting for duty but no work is assigned to them. The complainants in their evidence have given the names of the juniors to whom the work is assigned. In fact in para 18 of the written statement the petitioners have admitted that persons junior to the complainants have been employed by them. In these circumstances, the Industrial Court was justified in holding that the petitioners are guilty of unfair labour practice covered under Item 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971 and directing the petitioners to assign work and pay salary and other benefits from June 1, 1990.

Re : Recovery Certificate issued by the Industrial Court on March 11, 2005 to the legal heirs of Mr.Nadkarni.

37. In the case of Mr.Nadkarni, the only grievance of the petitioners is that on June 12, 1989 Mr.Nadkarni

attained the age of superannuation and, therefore, the Industrial Court could not have directed the petitioners to pay wages and other benefits to the legal heirs of Mr.Nadkarni after June 12, 1989. As rightly contended by the advocate for respondent No.8 under the certified standing orders the complainants were entitled to continue in service upto 63 years of age unless they were found to be inefficient. Admittedly, the petitioners have neither issued any notice to the effect that with effect from June 12, 1989 the services of Mr.Nadkarni comes to an end on account of superannuation nor they have led any evidence to show that Mr.Nadkarni was not efficient to continue in service upto the age of 63 years. In fact, the petitioners have paid wages and other benefits to the legal heirs of Mr.Nadkarni from June 12, 1989 to May 31, 1990 as per the order of the Labour Court passed in application (IDA) No.377 of 1990 on November 20, 1995.

38. The very fact that the petitioners have paid salary payable to Mr.Nadkarni for the period from June 12, 1989 to May 31, 1990 as per the order of the Labour Court clearly shows that the petitioners have accepted the fact that Mr.Nadkarni was efficient to continue in service upto the age of 63 years. In these circumstances, it is not open to the petitioners to contend belatedly that Mr.Nadkarni was not entitled to

continue in service after June 12, 1989.

39. Although it was contended that the amount quantified by the Industrial court is incorrect, the petitioners have not demonstrated as to how the said quantification is incorrect. Neither before the Industrial Court nor in this Court the petitioners have stated the amount which according to them is due and payable to the legal heirs of Mr.Nadkarni. It is pertinent to note that the Industrial Court has directed the petitioners to pay wages upto June 1, 1992 even though according to the petitioners, Mr.Nadkarni would have superannuated at 63 years on June 12, 1992. The fact that Mr.Shirsat and Mr.Ahire have restricted their claim upto 60 years cannot be a ground to deny salary and other benefits to Mr.Nadkarni upto his attaining 63 years of age, especially when he is not found to be inefficient. For all the above reasons, the amount quantified by the Industrial Court cannot be faulted. Though the amount quantified by the Industrial Court is Rs.91,449.25 in the operative part of the order passed by the Industrial Court it is inadvertently stated that the amount payable is Rs.1,91,449.25. Advocate for the respondent No.8 fairly states, that though the petitioners have deposited in this Court Rs.1,91,449.25, the respondent No.8 is entitled only to Rs.91,449.25 with accrued interest, if any, thereon.

40. In the result, there is no merit in the petition and the same is hereby dismissed. The Prothonotary & Senior Master is directed to pay Rs.91,449.25 with accrued interest, if any, thereon to the respondent No.8 and refund the balance amount to the petitioners. No order as to costs.

(J.P. Devadhar, J.)